

Notice of Allowability

Applicati n No.

09/001,039

Examiner

David Guzo

Applicant(s)

JOLLY ET AL.

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 8/25/03.
2. ☒ The allowed claim(s) is/are 37-56.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☒ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No. 38.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>1</u> . |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. <u>1</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Louis C. Cullman on 11/14/03.

The application has been amended as follows:

In the Specification:

On Page 1, substitute the following Continuing Data for the paragraph beginning at line 5:

This application is a continuation-in-part of copending U.S. Serial No. 08/869,309, filed June 4, 1997, now abandoned, which is a continuation-in-part of copending U.S. Serial No. 08/696,381, filed August 13, 1996, now abandoned, which is a continuation-in-part of U.S. Serial No. 08/645,601, filed July 3, 1996, now abandoned, which is a continuation-in part of U.S. Serial No. 08/367,071, filed December 30, 1994, now abandoned, all of which are hereby incorporated by reference.

On Page 158, beginning with line 4:

This example describes several modifications of the retroviral vector pKT1 resulting in decreased sequence homology to the retroviral gag/pol and envelope expression constructs. pKT-1 is described in Example 1 herein and is shown

Art Unit: 1636

schematically in Figure 33. [(]The construction of the pKT-1 starting material used in the present example is further described in detail in co-owned United States Patent Numbers 6,013,517, issued January 1, 2000 and 6,333,195, issued December 25, 2001, both of which are hereby incorporated by reference in their entirety. In addition, two stop codons were introduced in the DNA sequences of the packaging signal sequence in order to increase the safety of these vectors. All modifications are summarized in Fig. 36 and the resulting retroviral backbones are called pBA-5b, pBA-5b and pBA-5c. Further details on the construction of pBA-5a, pBA-5b and pBA-5c are provided in co-owned U.S. [Serial No. 08/721,327 and co-owned application attorney docket 1147.004, filed May 5, 1997, entitled "Crossless Retroviral Vectors" and which is also] Patents 6,013,517 and 6,333,195 and are hereby incorporated by reference.

In the Claims:

Cancel the second of the two claims listed as Claim 48.

The above amendment to the first page of the specification was necessary to update the status of applications recited in the Continuing Data.

It is again noted that the instant Declaration contains a claim, under 35 USC 119(a)-(d), for foreign priority for the U.S. PCT applications PCT/US95/16852 and PCT/US97/11784. Since these PCT documents appear to be U.S. PCTs, a claim for foreign priority under 35 USC 119(a)-(d) would be improper. IF applicants seek to claim

Art Unit: 1636

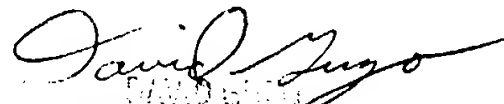
benefit for these PCT documents, benefit should be claimed under 35 USC 120 and said claim should be present in the Continuing Data section on the first page of the specification or on an Application Data Sheet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo, Ph.D., whose telephone number is (703) 308-1906. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D., can be reached on (703) 305-1998. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

David Guzo
November 14, 2003


DAVID GUZO
PRIMARY EXAMINER